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In The
Supreme Court of the United States

October Term, 1975

No. 75-548

HAROLD POSNER,
Petitioner

v.

THE BAR ASSOCIATION OF BALTIMORE CITY,
Respondent

Petition for a Writ of Certiorari to the Court of Appeals of Maryland

---

Harold Posner
3500 Oak Court
Baltimore, Maryland 21207
Petitioner

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No.

Harold Posner, Petitioner

v.

The Bar Association of Baltimore City,
Respondent

Petition for a Writ of Certiorari to the
Court of Appeals of Maryland

Harold Posner, Petitioner, prays that a writ of certiorari issue to review the Order of the Court of Appeals of Maryland entered in the above case on August 1, 1975.

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland (R 42) is reported at 339 A. 2d. 657. The opinion or Memorandum and Recommendation of the 3 Judge panel of the Supreme Bench of Baltimore City is found at (R 10) and is unreported.

JURISDICTION

The order of the Court of Appeals of Maryland was made and entered on August 1, 1975 (R 72) and a copy thereof is appended to this petition in the Appendix at pp. 52-53. The jurisdiction of this Court is invoked under 28 U. S. C. section 1257 (3).

QUESTIONS PRESENTED

1. That Subtitle BV of the 1974 Edition of the Maryland Rules of Procedure (Appdx. pp. 22-45) (covering this case) governing disciplinary proceedings in Maryland, and having the force of law, is unconstitutional and violates the 5th Amendment of the United States Constitution, as applied to the States by the 14th Amendment to the United States Constitution, as well as the equal protection of the laws clause of the 14th Amendment to the United States Constitution, for the following reasons:

(a). Petitioner was denied the right of trial by jury on the charges in the disciplinary proceeding, although a number of states now permit a jury trial in disciplinary proceedings.

(b). That Petitioner was denied the right to name any of the three Judges who heard the charges against him. He was denied challenges to any or all of said Judges.

(c). That there are no limitations or laches in the aforementioned Rules as to when charges can be brought against an attorney in a disciplinary proceeding. The charges against Petitioner are mostly 7, 8 and 10 years old. This amounts to "cruel and unusual punishment" within the meaning of the 8th Amendment to the United States Constitution. No other profession or field is faced with such a burden.

2. Petitioner is denied the equal protection of the laws clause of the 14th Amendment to the United States Constitution due to the fact that The Bar Association of Baltimore City has a double standard when it concerns wealthy and prominent attorneys and members of large law firms in complaints under Subtitle BV. Charges against said attorneys are always dropped, regardless of the seriousness and the truth of said charges.

(a). Petitioner issued Subpoeans Duces Tecum (Appdx. pp. 49-52) for The Bar Association records to

support Petitioner's contentions in this connection. Said Subpoenas Duces Tecum was quashed by the said 3 Judges below. (T 20). This is another violation of Petitioner's constitutional rights.

(b). The Bar Association of Baltimore City, dominated by large law firms, uses grievance procedure as a weapon to drive small, minority attorneys out of business.

3. Petitioner was denied the right of a speedy trial. Although a complaint was filed against him in May, 1970 before the Grievance Committee of the Bar Association of Baltimore City, charges were not heard against him until February, 1975, a period of almost 5 years.

4. Petitioner's right to due process of law was violated in the original trial below, in that the acts found to constitute disciplinary offenses were not contained in the Charges alleged by the complaining Bar Association. (R 3).

RULES INVOLVED

The pertinent portions of Sub-

title BV of the 1974 Edition of the Maryland Rules of Procedure are set forth in the Appendix at pp.(22-45).

STATEMENT

Disciplinary proceedings against Harold Posner, a member of the bar of the State of Maryland, were heard by a three Judge panel, all Christians, on February 6, and 7, 1975. Petitioner is a member of a minority group, of the Jewish religious faith.

The charges involved Petitioner's handling of an Estate which dated back to 1966, and one charge on the same subject matter dated back to 1964.

His accuser was a wealthy and prominent attorney, who was for many years, a powerful official of a State agency in Maryland, who was well acquainted with many Judges.

There was a fight for control of this Estate, and Petitioner's accuser was successful in having Petitioner removed as Administrator of this Estate.

This prominent attorney then obtained ⅓ of the value of this Estate as an attorney's fee.

When Petitioner filed for Letters of Administration of the Estate of Leslie Engel in October, 1966, he learned for the first time of heirs in the country of Hungary, and that the decedent, Lelsie Engel, apparently had two wives at the same time. Petitioner was shocked to hear this; he knew of an American wife, Anna Engel, who died some months earlier in 1966. Engel and the Baltimore wife were legally married, and a certified copy of this marriage certificate was produced to the Court of Appeals of Maryland, but to no avail. Petitioner reserved this situation on the Petition for Letters of Administration: that there appear to be other heirs of the decedent, who reside in the country of Hungary and that he (Petitioner) would investigate. A true statement.

However, the trial Court held that this wasn't good enough, and that this constitutes a fraud on the Court.

Several months after Petitioner was appointed Administrator of this Estate, he heard from a Silver Spring, Maryland attorney, Joseph A. Bonis, Esquire, who represented the Hungarian Government in Estate matters. He retained this powerful attorney to represent him.

In May, 1970, a complaint was made in Baltimore County, which was forwarded to the Grievance Committee of The Bar Association of Baltimore City, which involved alleged conflict of interest by Petitioner in the handling of this Estate; a situation from which Petitioner had withdrawn in September, 1967.

In May, 1972, Petitioner again heard from The Bar Association. A panel hearing of its Grievance Committee took place in September, 1972. Charges were filed in July, 1974, and a hearing before the 3 Judge panel of the Supreme Bench of Baltimore City took place on February 6 and 7, 1975.

Petitioner never received his day in Court. Widespread publicity appeared in the Baltimore Sun, a large two column article the morning of the trial.

His Motion to Dismiss the Charges were denied; his Subpoenas Duces Tecum for production of Bar Association records were quashed.

The Judges appeared to have no belief in Petitioner's testimony

whatsoever.

Even perjured testimony was believed by the trial Judges.

A witness who perjured himself was one who said he was present at a meeting in April, 1967, when in fact this person was never there.

Mitigating and other evidence produced by Petitioner was not even referred to in the 3 Judge panel findings of fact (R 10) which were erroneous in a number of facts, and respects.

The Court of Appeals of Maryland (R 42) adopted erroneous findings of facts by the 3 Judge panel (R 10), and even added more erroneous findings of their own (R 42), not even contained in the Statement of Charges. (R 3).

Exceptions of Respondent (R 17) dealt with this point about findings of guilt on disciplinary charges not found in the Statement of Charges.R(3)

This is contrary to to a landmark United States Supreme Court decision on this matter.

In Re: Ruffalo, 390 U. S. 544,
88 S. Ct. 1222

Federal questions were raised at the start of the trial.

First, Petitioner's Subpoenas Duces Tecum (Appdx. 49-52) was quashed by the 3 Judge panel. (T 20). This point was again raised in Exceptions of Respondent... to the Memorandum and Recommendation of the Panel etc. (R 17), specifically Paragraph 12 of said Exceptions:

> "The respondent was denied the right to produce evidence that the disciplinary system...is unconstitutional, by reason of the Three-Judge Panel's quashing of his subpoena duces tecum, which action,...was itself a denial of his due process right to compulsory process...".

Second, Petitioner raised unconstitutionality of Subtitle BV of the 1974 Edition of the Maryland Rules of Procedure in Attorney's Motion to Dismiss etc.; filed on January 29, 1975 prior to trial; (Appdx. pp. 45-49 incl.) This concerned Petitioner's denial of Jury trial; Petitioner denied right to name any of the 3 Judges; denial of right to challenge any of said Judges; no limitations or laches in Subtitle BV: also Bar Association of Baltimore City has double standard as to

attorneys facing Grievance Committee complaints; (T 23-24-denial of Jury Trial) (T 24-challenges to 3 Judges) (T 27-28 Limitations or laches) (T 29, 31-38 incl.- as to double standard of The Bar Association of Baltimore City) also on double standard- T 59-61) also (T 88-107 Testimony of Cahill, then President of The Bar Association of Baltimore City); Denial of right of speedy trial, also raised in Motion to Dismiss (T 24) (T 25, 26- no limitations); Motion to Dismiss Charges denied by 3 Judge Panel (T 109); same points raised again in Exceptions of Respondent...to the Memorandum and Recommendation of Panel...(R 17) A number of acts found to constitute disciplinary offenses not contained in Charges (R3), raised in afore-mentioned Exceptions of Respondent etc. (R 17). These Exceptions were overruled by Court of Appeals of Maryland in its opinion. (R 42).

REASONS FOR GRANTING THE WRIT

1. The most important right in a trial is the right to trial by Jury; it is immaterial whether it is a civil, criminal or disciplinary proceeding against an attorney. No amount of Judges can take the place of a Jury trial. A number of states, including Georgia, North Carolina and Texas now permit Jury trials in disciplinary proceedings.

It should be made uniform throughout the country that an attorney facing a trial in a disciplinary proceeding can elect a Jury trial. Otherwise this would be a denial of the equal protection of the laws clause of the 14th Amendment to the U. S. Constitution.

Long v. Robinson, 316 FS 22

Spevack v. Klein, 385 U. S. 511, 87 S. Ct. 625, 17 L. ed. 574 (1967) held that a disciplinary proceeding involving an attorney is a quasi-criminal proceeding, that that the 5th Amendment privilege against self-incrimination is applicable.

A disciplinary proceeding against an attorney is a very serious matter. It concerns not only his livelihood, but his reputation and good name.

Disbarment of an attorney carries a stigma; difficulty in obtaining employment, in obtaining a loan; he is often ostracized.

Ga. Code Ann. 9-513 (1935), North Carolina Gen. Stat. Ann. 84-28 (3) (d) (1965) and Texas Rev. Civ. Stat. Ann. Art. 316, (1959)-authorities for Jury trials in disciplinary proceedings against attorneys. To be disbarred on the strength of three Judges without a Jury trial is a denial of our American system of Justice, especially when the

Respondent Attorney cannot name any of the Judges, or challenge any of them, or question them beforehand as to any bias or conflict of interest.

2. It is imperative that limitations be written into disciplinary proceedings rules and statutes. It is grossly unfair for an attorney ten years after the occurrence to be faced with a Grievance Complaint. No other profession or field faces such a burden.

An ordinary home improvement contractor must be served with notice of a complaint within three years after the contract in question. Regulation .33 of the State of Maryland Department of Licensing and Regulation, Home Improvement Commission (Appdx. 56).

3. Petitioner was denied the right to subpoena Bar Association to prove that there is a double standard existing; that only charges against small lawyers are brought such as Petitioner.

Fay v. New York, 332 U. S. 261, 67 S. Ct. 1613.

The Fay case says that provision in the 14th Amendment to the U.S. Constitution forbidding a state to deny any person within its jurisdiction the equal protection of the laws prohibits prejudicial disparities before the law,

and under it a system which might be constitutionally unobjectionable, if applied to all, may be brought within the prohibition if some have more favorable treatment.

What is so sacrosanct about an attorney that he must be a second class citizen when faced with destruction of his livelihood and reputation in form of a disciplinary proceeding?

An attorney is a human being; he should be entitled to all guarantees possible to ensure a fair trial; trial before 3 Judges not of his choosing is not a fair trial, and this is not justice.

The questions presented by this case are of great importance to every practicing attorney in this country.

CONCLUSION

For the reasons hereinbefore set forth, it is respectfully submitted that this petition for a writ of certiorari should be granted.

HAROLD POSNER

Petitioner

APP. 1

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

OPINION OF COURT OF APPEALS OF MARYLAND:

IN THE COURT OF APPEALS OF MARYLAND

Misc. Docket (Subtitle BV)

No. 7

September Term, 1974

THE BAR ASSOCIATION OF BALTIMORE CITY

v.

HAROLD ROSNER

Murphy, C. J.
Singley
Smith
Digges
Levine
Eldridge
O'Donnell,
J. J.

Opinion by Singley, J.

Filed: June 24, 1975

On 31 July 1974, The Bar Association of Baltimore City (the Bar Association) filed in this Court a petition instituting

disciplinary proceedings against Harold Posner, a member of the Maryland bar. On the same day, we entered an order pursuant to Maryland Rule BV 3 b referring the matter for hearing and determination by a three-judge panel of the Eighth Judicial Circuit, Sodaro, Howard and Karwacki, JJ.

Ultimately, after an effort by Posner to remove the case to the United States District Court, which was opposed by the Bar Association and was aborted by an order of the United States District Court dismissing Posner's petition[1] the matter at last came on for hearing before the three-judge panel.

What follows is the finding of fact of the three-judge panel:

"Harold Posner, a member of the Bar of this State since his admission in June of 1950, in September of 1966 was consulted by Maria Nyitrai and Irma Pallay with regard to the administration of the Estate of Leslie Engel, who died intestate a resident of Baltimore County on September 16, 1966 at the age of 83. Leslie Engel had for a long time prior to his death lived with one Anna Dominyak, who had died on January 25, 1966. Mrs. Nyitrai and Mrs. Pallay were her nieces.

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1. An appeal to the United States Circuit Court of Appeals for the Fourth Circuit was similarly denied.

"Mr. Posner knew that Leslie Engel had long ago separated from his wife and child who were currently residing in Hungary, and that Anna Dominyak and he were not husband and wife despite their representation to the contrary in the community in which they lived.[2] Notwithstanding this information, the Respondent entered into an agreement with Nyitrai and Pallay on October 5, 1966 whereby he agreed with them to act as Administrator of the Estate of Leslie Engel at an agreed fee for his services of 10% of the gross estate to be administered pursuant to this agreement. On October 6, 1966 the Respondent qualified as the Administrator of the Estate of the intestate Leslie Engel before the Orphans' Court of Baltimore County. He represented to the Court in his Petition for Letters that Nyitrai and Pallay were nieces and heirs at law of the decedent despite his knowledge that the intestate's sole heirs at law were a surviving widow and daughter.[3]

On November 11, 1966, Joseph A. Bonis, Esquire, a member of the Bar of this Court, wrote to the Respondent advising him that he represented Zsofia Engel, the widow of the deceased, and Iren Racz, daughter of the deceased, and requested information concerning the decedent's estate. The Respondent replied on November 21, 1966 setting forth what he would require in verification from Mr. Bonis of the status of Mrs. Engel and Mrs. Racz. Despite the fact that Bonis and the Respondent continued to correspond in connection with Bonis' efforts to obtain

the proper verification of the status of his clients in order to satisfy the Respondent's requirements through April 27, 1967 when the first meeting between Bonis and Posner took place at Posner's office in Baltimore, Posner on March 7, 1967 filed a First Administration Account with the Orphans' Court of Baltimore County without any notice to Bonis and on April 12, 1967 entered (into) an agreement with Nyitrai whereby he agreed in consideration of a contingent fee of 25% to press a claim for nursing services on behalf of Nyitrai against the estate of the decedent in the amount of $15,000. On April 19, 1967 he filed a Petition with the Orphans' Court of Baltimore County asking for authority to settle the nursing services claim in the amount of $15,000 attaching thereto an affidavit of Nyitrai which he had prepared and which she had executed on April 12, 1967. Nowhere in the Petition for authority to settle the claim nor in the affidavit of Nyitrai was his status as attorney for the claimant disclosed to the Court.

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2. Just before the matter came on for hearing before us, Posner produced a certificate evidencing the marriage of Engel and Dominyak in Kentucky in 1932. It appears to be conceded that this was a bigamous liason. 3. It will be recalled that Engel had survived Mrs. Dominyak by some several months.

"At the meeting which took place on April 27, 1967 between Bonis and Posner, Bonis delivered to Posner complete documentation of the pedigree of his clients as the sole heirs at law of Leslie Engel. Notwithstanding this information, Posner failed to disclose his representation of Nyitrai in a claim against the estate for nursing services on which an Order authorizing settlement had been entered by the Orphans' Court of Baltimore County on April 19, 1967. The meeting concluded with Posner's promise to submit a copy of the Second Administration Account which he was going to file in the near future to Bonis prior to its filing.

"Without honoring this promise, the Respondent filed a Second Administration Account of the estate with the Orphans' Court of Baltimore County on May 4, 1967 in which he claimed as a disbursement the $15,000 claim for nursing services which he had been authorized to settle on April 19th and in which he showed a distribution to the widow and daughter of the decedent of the net estate after payment of all claims, including the nursing services claim, in the amount of $5,222.02. The gross estate reported as received in the First Administration Account was in the amount of $25,762.73.

When Bonis learned of the filing of the Second Administration Account, he retained Ward B. Coe, Jr., Esquire of the Baltimore Bar to assist him in protection of the rights of the widow and daughter in the estate of the deceased. Mr. Coe wrote to Posner on June 8, 1967 advising him of the representation of the heirs of the decedent and of their attorney in fact, Bonis. Thereafter exceptions were filed to the First and Second Administration Accounts filed by Posner as Administrator of the estate in the Orphans' Court of Baltimore County along with a Petition for his removal as Administrator. Lengthy proceedings then ensued in the Orphans' Court which culminated on April 13, 1970 with Posner's removal as Administrator of the estate and the appointment of Mr. Bonis as Administrator D.B.N. This action of the Orphans' Court was affirmed on appeal by the Circuit Court for Baltimore County on January 11, 1971.

"During the same period in proceedings which originated in the Orphans' Court but which were assumed on appeal by the Circuit Court for Baltimore County, the Respondent after repeated hearings before the Circuit Court and only after threat of contempt proceedings finally rendered an acceptable final accounting of the estate on May 19, 1971. At that

> time in addition to approving the final accounting the Circuit Court for Baltimore County entered judgment in favor of the Administrator D.B.N. against the Respondent for $901.11 representing unauthorized disbursements from the estate by Posner. This judgment was ultimately satisfied by the surety on the Respondent's bond which he had filed in connection with his administration of the estate.
>
> "Meanwhile, Nyitrai, who retained other counsel in September of 1967 to press her claim for nursing services filed against the estate, failed to file suit on her claim until June 4, 1970 at a time when the same was barred by the applicable statute of limitations. Code (1972 Repl. Vol.), Article 57, Section 1; Nyitrai v. Bonis, 266 Md. 295 (1972)."

Based on those findings, the panel recommended that Posner be disbarred.

In his exceptions, Posner wheels up a battery of reasons why he should not be disbarred. Many of the contentions are patently inapposite. His challenges of

the disciplinary proceeding as amounting to a denial of due process and of equal protection overlook the purpose of the proceeding: to protect the public by determining a layer's fitness to practice law, In re Barton, 273 Md. 377, 381, 329 A. 2d. 102, 104 (1974); Maryland State Bar Ass'n v. Sugarman, 273 Md. 306, 313-15, 329 A. 2d 1, 5 (1974), citing In re Rouss, 221 N.Y. 81, 84-85, 116 N. E. 782, 783 (1917). What Posner was entitled to was a full and fair hearing, which he had, Maryland State Bar Ass'n v. Frank, 272 Md. 528, 538, 325 A.2d. 718, 723-24 (1974).

The short answer to all of this is that Posner concedes that he represented a creditor of the Engel estate on a contingent fee basis at the same time that he was acting as administrator of the estate, and sought court approval of the settlement of the claim without disclosing that he was representing the claimant; that he withdrew funds from the estate to finance the defense of an action brought to remove him as administrator, amounts which were ultimately repaid by the surety on his administrator's bond, and that he admits that he knew that the allegations as to Engel's heirs and next of kin in the petition which

he prepared for the grant of letters of administration were false at the time of the preparation of the petition, with the consequence that a fraud was perpetrated on the orphans' court.

The attempt to raise limitations or laches as a defense overlooks the proceeding's purpose, that of protecting the public, Anne Arundel County Bar Ass'n v. Collins, 272 Md. 578, 581-85, 325 A. 2d. 724, 727-29 (1974); In re Weinstein, 254 Or. 392, 459 P. 2d 548 (1969), cert. denied, 398 U. S. 903 (1970).

We similarly reject Posner's contention that he was denied a speedy trial. The applicability of this right to disciplinary proceedings was considered and rejected in Maryland State Bar Ass'n v. Frank, supra, 272 Md. at 534-35. Even had this right been available, Posner overlooks the fact that much of the delay was attributable to his own tactics.

The panel determined that Posner was guilty of a violation of the Code of Professional Responsibility adopted by Maryland Rule 1230 on 13 October 1970,[4] particularly as regards Disciplinary Rule 1-102 (A) (4), "A lawyer shall not engage in conduct involving dishonesty, fraud,

deceit, or misrepresentation"; Disciplinary Rule 5-105(A), "A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proferred employment, . . ." and (B), "A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client,. . ." and Disciplinary Rule 9-102(A) and (B) which requires that a lawyer shall preserve the identity of funds or property belonging to a client and maintain complete records concerning such funds or property.

We have made, as we must, an independent, detailed review of the complete record and have concluded that

4. The Code had been adopted by the House of Delegates of the American Bar Association in August, 1969 and by the Maryland State Bar Association in July, 1970. It does not substantially differ, as regards the conduct now before us, from the Canons of Professional Ethics adopted by the Amer-

the factual findings of the three-judge panel are supported by clear and convincing evidence, which is the test to be applied both by the panel and by this Court in disciplinary proceedings instituted under the BV Rules, Maryland State Bar Ass'n v. Hirsch, Md. , , 335 A.2d 108, 112 (1975); Maryland State Bar Ass'n v. Frank, supra, 272 Md. at 538-39; Bar Ass'n of Baltimore City v. Marshall, 269 Md. 510, 516, 307 A.2d. 677, 680-681 (1973). Accordingly, we adopt the panel's findings of fact as our own as well as the panel's conclusion that Posner had been guilty of a clear violation of the disciplinary rules, which we regard as inescapable.

Once again we refer to language

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ican Bar Association in 1908, and as amended. See Canons 6, 11, 15 and 22; see also Opinions 60, 160 amd 167 of the Committee on Professional Ethics and Grievances of the American Bar Association; Informal Opinions 557, 621 and 976

of the Court of Appeals of Kentucky in In re Stump, 272 Ky. 593, 598, 114 S.W.2d. 1094, 1097 (1938), quoted in part with approval by us in Maryland State Bar Ass'n v. Sugarman, supra, 273 Md. at 317. Although Stump dealt with the reinstatement of a disbarred attorney, it is nonetheless apposite here:

> "The ultimate and decisive question is always whether the applicant is now of good moral character and is a fit and proper person to be reintrusted with the confidences and privileges of an attorney at law. This question has a broader significance than its purely personal aspect. From time immemorial lawyers have in a peculiar sense been regarded as officers of the court. It is a lawyer's obligation to participate in upholding the integrity, dignity, and purity of the courts. He owes a definite responsibility to the public in the proper administration of justice. It is of utmost importance that the honor and integrity of the legal profession should be preserved and that the lives of its members be without reproach. The malpractice of one reflects dishonor not only upon

> his brethren, but upon the courts themselves, and creates among the people a distrust of the courts and the bar".

It naturally follows that the recommendation of the panel that Harold Posner be disbarred must be accepted and his name shall be stricken from the rolls of those authorized to practice law in this State.

IT IS SO ORDERED.

LOWER COURT OPINION

THE BAR ASSOCIATION OF BALTIMORE CITY	*	BEFORE THE SUPREME BENCH
	*	OF
v.		BALTIMORE CITY
	*	
HAROLD POSNER		
	*	

MEMORANDUM AND RECOMMENDATION

On July 29, 1974, the Court of Appeals of Maryland pursuant to Maryland Rule BV3 designated the undersigned Judges as the panel to conduct a hearing of charges of professional misconduct brought against the Respondent by The Bar Association of Baltimore City.

Before answering the charges, the Respondent on August 16, 1974 filed a Petition and Deposit for removal of the case from this Court to the United States District Court for the District of Maryland. The Bar Association of Baltimore City promptly challenged the removal and its Motion to Dismiss the Petition for Removal was granted by C. Stanley Blair, United States District Judge, on January 6, 1975.

Thereafter, the Respondent filed herein a combined Motion to Dismiss and Answer to the charges of misconduct asserted against him and the hearing before this panel on the issues raised by the Motion as well as by the Answer was held on February 6 and 7 of 1975.

In his Motion to Dismiss the charges, the Respondent contended that:

1. The hearing of the charges before this panel should be postponed until his appeal of Judge Blair's Order of January 6, 1975 to the United States Court of Appeals for the Fourth Circuit had been determined,

2. That the entire procedure for disciplining attorneys admitted to practice by the Court of Appeals of Maryland

as prescribed by Code (1968 Repl. Vol.) Article 10, Section 11 et seq. and Maryland Rules, Subtitle BV is in violation of the United States and Maryland Constitutions.

3. That the charges against him were barred by laches, and

4. That he was discriminated against in the bringing of charges by The Bar Association of Baltimore City since he was a poor sole practitioner of the law and allegedly was treated differently by The Bar Association of Baltimore City than are members of large law firms practicing within Baltimore City.

We found no merit in any of the contentions and denied the Motion on February 6, 1975 after receiving such evidence thereon as the Respondent wished to offer. The evidence proffered by the Respondent went only to the fourth ground for dismissal asserted in the Motion. Rather than support the allegations, the testimony completely contradicted the discrimination asserted.

Findings of Fact

Harold Posner, a member of the Bar of this State since his admission in

June of 1950, in September of 1966 was consulted by Maria Nyitrai and Irma Pallay with regard to the administration of the Estate of Leslie Engel, who died intestate a resident of Baltimore County on September 16, 1966 at the age of 83. Leslie Engel had for a long time prior to his death lived with one Anna Dominyak, who had died on January 25, 1966. Mrs. Nyitrai and Mrs. Pallay were her nieces.

Mr. Posner knew that Leslie Engel had long ago separated from his wife and child who were currently residing in Hungary, and that Anna Dominyak and he were not husband and wife despite their representation to the contrary in the community in which they lived. Notwithstanding this information, the Respondent entered into an agreement with Nyitrai and Pallay on October 5, 1966 whereby he agreed with them to act as Administrator of the Estate of Leslie Engel at an agreed fee for his services of 10% of the gross estate to be administered pursuant to this agreement. On October 6, 1966 the Respondent qualified as the Administrator of the intestate Leslie Engel before the Orphans' Court of Baltimore County. He represented to the Court in his Petition for Letters that Nyitrai and Pallay were nieces and heirs at law of the decedent despite his knowledge that the intes-

tate's sole heirs at law were a surviving widow and daughter.

On November 11, 1966, Joseph A. Bonis, Esquire, a member of the Bar of this Court, wrote to the Respondent advising him that he represented Zsofia Engel, the widow of the deceased, and Iren Racz, daughter of the deceased, and requested information concerning the decedent's estate. The Respondent replied on November 21, 1966 setting forth what he would require from Mr. Bonis in verification of the status of Mrs. Engel and Mrs. Racz. Despite the fact that Bonis and the Respondent continued to correspond in connection with Bonis' efforts to obtain the proper verification of the status of his clients in order to satisfy the Respondent's requirements through April 27, 1967 when the first meeting between Bonis and Posner took place at Posner's office in Baltimore, Posner on March 7, 1967 filed a First Administration Account with the Orphans' Court of Baltimore County without any notice to Bonis and on April 12, 1967 entered an agreement with Nyitrai whereby he agreed in consideration of a contingent fee of 25% to press a claim for nursing services on behalf of Nyitrai against the estate of the decedent in the amount of $15,000. On April 19, 1967 he filed a Petition with the Orphans' Court of Baltimore County asking for authority

to settle the nursing services claim in the amount of $15,000 attaching thereto an affidavit of Nyitrai which he had prepared and which she had executed on April 12, 1967. Nowhere in the Petition for authority to settle the claim nor in the affidavit of Nyitrai was his status as attorney for the claimant disclosed to the Court.

At the meeting which took place on April 27, 1967 between Bonis and Posner, Bonis delivered to Posner complete documentation of the pedigree of his clients as the sole heirs at law of Leslie Engel. Notwithstanding this information, Posner failed to disclose his representation in a claim against the estate for nursing services on which an Order authorizing settlement had been entered by the Orphans' Court of Baltimore County on April 12, 1967. The meeting concluded with Posner's promise to submit a copy of the Second Administration Account which he was going to file in the near future to Bonis prior to its filing.

Without honoring this promise, the Respondent filed a Second Administration Account of the estate on May 4, 1967 in which he claimed as a disbursement the $15,000 claim for nursing services which he had been authorized to settle on April 19th and in which he showed a dis-

tribution to the widow and daughter of the decedent of the net estate after payment of all claims, including the nursing services claim, in the amount of $5,222.02. The gross estate reported as received in the First Administration Account was in the amount of $25,762.73. When Bonis learned of the filing of the Second Administrative Account, he retained Ward B. Coe, Jr., Esquire of the Baltimore Bar to assist him in protection of the rights of the widow and daughter in the estate of the deceased. Mr. Coe wrote to Posner on June 8, 1967 advising him of the representation of the heirs of the decedent and of their attorney in fact, Bonis. Thereafter exceptions were filed to the First and Second Administration Accounts filed by Posner as Administrator of the estate in the Orphans' Court of Baltimore County along with a Petition for his removal as Administrator. Lengthy proceedings then ensued in the Orphans' Court which culminated on April 13, 1970 with Posner's removal as Administrator of the Estate and the appointment of Mr. Bonis as Administrator D.B.N. This action of the Orphans' Court was affirmed on appeal by the Circuit Court for Baltimore County on January 11, 1971.

During the same period in proceedings which originated in the Orphans' Court but which were assumed on appeal by the Circuit Court for Baltimore County, the Respondent after repeated hearings before the Circuit Court and only after threat of contempt proceedings finally rendered an acceptable final accounting of his administration of the estate on May 19, 1971. At that time in addition to approving the final accounting the Circuit Court for Baltimore County entered judgment in favor of the Administrator D.B.N. against the Respondent for $901.11 representing unauthorized disbursements from the estate by Posner. This judgment was ultimately satisfied by the surety on the Respondent's bond which he had filed in connection with his administration of the estate.

Meanwhile, Nyitrai, who retained other counsel in September of 1967 to press her claim for nursing services filed against the estate, failed to file suit on her claim until June 4, 1970 at a time when the same was barred by the applicable statute of limitations. Code (1972 Repl. Vol.), Article 57, Section 1; Nyitrai v. Bonis, 266 Md. 295 (1972).

Conclusions of Law

From these findings of fact, we conclude:

1. That the Respondent in applying for Letters of Administration on the Estate of Leslie Engel misrepresented the facts as to the heirs of the decedent in violation of the Code of Professional Responsibility, D.R. 1-102A(4),

2. That the Respondent in undertaking to represent Nyitrai in her claim adverse to the Estate of Leslie Engel of which he was the Administrator knowingly placed himself in a conflict of interest in violation of the Code of Professional Responsibility, D.R. 5-105(A) and (B), and

3. That the Respondent in failing to properly account for his administration of the Estate of Leslie Engel and in making unauthorized disbursements therefrom principally for his own benefit violated the Code of Professional Responsibility, D. R. 9-102.

Cf. Bar Ass'n v. Marshall, 269 Md. 510 (1973); In The Matter of Lombard, 242 Md. 202 (1966); Milio v. Bar Associ-

ation, 227 Md. 527 (1962).

Recommendation

Based upon the foregoing findings of fact and conclusions of law, it is this 26th day of March, 1975, recommended to the Court of Appeals of Maryland that the Respondent, Harold Posner, be disbarred from the practice of law in this State.

Anselm Sodaro
Joseph C. Howard
Robert L. Karwacki

SUBTITLE BV. DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

(From 1974 Edition of Maryland Rules of Procedure)

RULE BV1. DEFINITIONS.

As used in this Subtitle, the following terms have the following meanings, except as expressly otherwise provided, or as may result from necessary implication:

a. ATTORNEY.
"Attorney" means any person admitted by the Court of Appeals to practice law.

b. Bar Association

"Bar Association" means any of the following:

(i) The Maryland State Bar Association, Inc.,

(ii) The bar association in Baltimore City with the greatest number of members, and

(iii) The bar association in each county with the greatest number of members who are residents of the county and who maintain their principal office for the practice of law in the county.
(Amended Oct. 13, 1970).

c. Charges

"Charges" means the initial pleading filed in the Court of Appeals against an attorney alleging that he is guilty of professional misconduct or that he is incompetent or both.
(Amended Oct. 13, 1970).

d. Committee.

"Committee" means the grievance or other committee or committees of a bar association authorized to investigate complaints against attorneys pursuant to Rule BV2 (Complaints and Investigations by Bar Associations).
(Amended Oct. 13, 1970).

e. Court.

Notwithstanding the provisions of Rule 5 i, "court" means the circuit court for a county and the Supreme Bench of Baltimore City.

f. Executive Council.

"Executive Council" means the Board of Governors of the Maryland State Bar Association, Inc., and the executive or other governing council of each other bar association, or if a bar association has no governing council, then the president of such bar association.

g. Incompetent.

"Incompetent" means unable to render adequate legal services by reason of mental or physical illness or infirmity, or addiction to or dependence upon an intoxicant or drug.

h. Judicial Tribunal.

"Judicial Tribunal" means a court, any of the courts whose judges constitute the Supreme Bench of Baltimore City, the Court of Appeals, the Court of Special Appeals, any United States Court and a court of another State having general or appellate jurisdiction.

i. Office for the Practice of Law.

"Office for the practice of law" means an office maintained for the practice of law

in which an attorney usually devotes a substantial part of his time to the practice of law during ordinary business hours in the traditional work week. An attorney shall be deemed to be "in" such an office even though he is temporarily absent therefrom in the performance of duties of a law office actively conducted by him from that office.

RULE BV2. COMPLAINTS AND INVESTIGATIONS BY BAR ASSOCIATIONS.

a. Who may Investigate.

An investigation under this Subtitle may be initiated and conducted by a committee of the Maryland State Bar Association, Inc., or by a committee of the county where the attorney under investigation maintains an office for the practice of law, or where he resides, or where the offense is alleged to have occurred. An investigation may be initiated by a committee on its own motion or on a written complaint received from any responsible source.

b. Committee Proceeding.

1. Generally.

Notice of a complaint need not be given by the committee to the attorney complained of if the committee determines to dismiss

the complaint without conducting proceedings. Except as provided by this Rule, no action, other than a dismissal, shall be taken unless the attorney has been afforded an opportunity to examine and controvert the complaint and be represented by counsel. The rules of evidence need not apply at any proceeding before the committee. If the attorney cannot be found after the committee has made reasonable efforts to notify him, the committee may proceed pursuant to this Subtitle without complying with the requirements of this section.

2. Quorum.

A committee, or the executive council of the bar association of which it is a committee, shall determine the number of committee members which shall constitute a quorum for proceedings under this Subtitle, but in no event shall a quorum consist of less than three (3) members.

3. Witnesses-Testimony.

(a). Oaths; Testimony.

A committee shall have the power to administer oaths to witnesses and to take the testimony of witnesses. Where a witeither (i) is unable to attend because of

illness or other disability, or (ii) is unwilling to attend and is not subject to summons as provided in paragraph (c) of this subsection, a committee may, after compliance with section b 1 of this Rule, appoint one or more members to take such witness's testimony where the witness is located.

(b). Depositions.

A committe or the attorney under investigation shall at any time have power to perpetuate the testimony of a person by deposition for use at the trial of any charges which may be filed. Such deposition shall be taken pursuant to Rule 402 (Deposition Before Action Instituted), except that (1) the notice required by Rule 405 (Notice for Deposition) shall be given to the attorney if the deposition is taken by the committee or to the committee if the deposition is taken by the attorney: (ii) section d of Rule 402 shall not be applicable; and (iii) the deposition shall be filed with the committee together with the other papers referred to in paragraph (c) of this subsection.

(c). Summons.

If in a proceeding before a committee the attendance and testimony of a witness or the production of books, doc-

uments or other tangible things is required, the committee may, on its motion, and shall, on motion of the attorney against whom the complaint has been made, submit a motion to a judge of a court setting forth the reasons why such witness or document is necessary and requesting the court to issue a summons pursuant to Rule 114 (Witness-Summons for) or Rule 115 (Summons Duces Tecum). If the judge finds that good cause exists for the attendance or testimony of such witness, or the production of such books, documents or other tangible things, he shall order the summons to issue. The motion and summons shall not divulge the name of the attorney against whom the complaint has been made. The sheriff's return shall be made to the committee and the proceedings shall not be docketed in court. The committee shall maintain dockets and files of all papers filed in such proceedings.

(d) Sanctions-Attachment-Contempt.

Whenever any person summoned to appear and give testimony or to produce books, documents or other

tangible things, fails or refuses to appear or to answer any proper question or to produce the items requested, the committee may, by motion which shall not divulge the name of the attorney against whom the complaint has been made, request a judge of the court which issued the summons to issue an attachment pursuant to section a of Rule 114, or to cite such person for contempt pursuant to section a of Rule 114, or to cite such person for contempt pursuant to Subtitle P (Contempt) of these Rules, or both.

c. Reprimand

A bar association acting through its executive council shall have the right to reprimand an attorney after investigation by a committee in accordance with this Subtitle. Upon the written request of the attorney that charges be filed against him, made within fifteen days of the date of service of such reprimand, the bar association shall either, (i) file charges against such attorney pursuant to Rule BV3 (Charges), or (ii) withdraw the reprimand and dismiss the complaint against such attorney. A A court may waive the fifteen day peri-

od if satisfied that the attorney has had no notice of the complaint against him. Unless otherwise provided by a court for good cause shown, a reprimand shall be served upon the attorney either in person or in the same manner as an original pleading in a civil action.

d. Record of Reprimand.

If the attorney has not requested that charges be filed against himwithin fifteen days of a reprimand pursuant to section c of this Rule, the bar association administering the reprimand shall, immediately following the fifteen period, make a written report of the name of the attorney, the nature of the offense and the date and nature of the action taken to the Director of the Administrative Office of the Courts, who shall maintain a permanent record thereof.

e. Reports.

A committee shall assign a number to each complaint against an attorney received by it and shall submit reports as to the status of each complaint to the Director of the Administrative Office of the Courts. The Director may establish a uniform system for numbering complaints, the frequency

of and period to be covered by the reports and the information to be included in the reports. Reports shall not be required more frequently than quarterly and shall not disclose the name of the attorney against whom the complaint has been made.

f. Confidential Nature of Proceedings and Records.

There shall be no public proceedings by the committee. The record of any proceeding of the committee and of any reprimand shall be private and confidential, unless and until charges arising out of the proceeding shall be filed in court, except as otherwise ordered by the Court of Appeals and except as hereinafter provided.

The following exceptions to privacy and confidentiality are hereby established:

(i). The records of the committee shall be available to the extent required to permit the consideration or processing of charges by an exective council and any attorney or attorneys designated by a bar association to prepare and file charges pursuant to these Rules.

(ii) After the filing of charges arising out of the proceeding, the records shall be available for appropriate use in connection therewith.

(iii) Appropriate data for the maintenance of indices, dockets and status checks of pending matters shall be supplied to any committee authorized to make investigations hereunder or any Court or administrative official designated to accumulate, maintain or preserve such indices and dockets.

(iv) A judicial tribunal may request and receive such information where it is relevant to the business of such tribunal.

(v) A committee conducting an investigation pursuant to this Subtitle may request and receive such information on a private and confidential basis.

(vi) In any case where an attorney is seeking admission to the practice of law before the Bar of any Court, or where an attorney is under consideration for judicial office or for employment in legal work by federal, state or local government, a court, the appropriate committee of a bar association, a Judicial Nominating Commission acting through its Chairman, or the appointing or hiring authority acting through his duly appointed representatives may receive information concerning reprimands and formal charges not having resulted in a dismissal.

There shall be no disclosure whatsoever by a committee of the receipt of, or facts surrounding, a complaint which has been dismissed, whether with or without

hearing. Where a committee has, at the time of the inquiry, a pending complaint which it has not disposed of by dismissal, reprimand or the filing of charges thereon in court, the fact that such a complaint is pending may be revealed to appropriate persons authorized under paragraph (i) through (vi) hereof to receive such data. However, the nature of such a pending complaint, the facts surrounding it known to the committee and any other investigation completed to the date of the inquiry may be revealed only pursuant to the waiver and request of the attorney involved.

RULE BV3. CHARGES.

a. Who May File.

Charges against an attorney may be filed by a bar association acting through its executive council.

b. Where Filed and Heard.

Charges against an attorney shall be filed in the Court of Appeals. The Court of Appeals by order may direct that the charges be transmitted to and heard in any court in the State and shall designate the judges to hear the charges.

c. Form.

The charges shall be in writing and shall be sufficiently clear and specific

reasonably to inform the attorney proceeded against of any misconduct charged and of the basis of any allegation that he is incompetent.

d. Service.

The Court of Appeals shall direct in each case the manner of service of a copy of the charges which shall be served together with the order of the Court of Appeals designating the court and judges to hear the charges.

e. Pleadings.

1. Motion for Transfer.

Within fifteen days following the service of the order designating a court in which the charges shall be heard, the attorney charged may move in the Court of Appeals for a transfer of the hearing to another court. Action on the motion shall be in the discretion of the Court of Appeals. Filing the motion shall stay the time for answer to the charges to fifteen days after the ruling on the motion. Procedure on the motion shall be governed by the applicable provisions of Rule 855 (Application for Order-Motion-Answer).

2. Time for Initial Pleading.

The attorney responding to the charges shall file his initial pleading in the court designated to hear the charges within fifteen days after the date of service of the charges upon him, unless a different time is fixed by the order

of the Court of Appeals or a Motion for transfer has been filed.

3. Subsequent Pleadings.

Subsequent pleadings shall be governed by and filed in the court designated to hear the charges within the times set forth in the applicable provisions of Chapter 300 (Pleading) of these Rules pertaining to pleadings in equity.

RULE BV4. HEARING.

a. Discovery-Same as in Civil Case.

Chapter 400 of these Rules shall govern the taking of depositions and discovery in the hearing of charges.

b. Procedural Defects.

The hearing of charges shall not be stayed or challenged by reason of any procedural defects alleged to have occurred prior to the filing of charges.

c. Number of Judges.

The charges shall be heard by not less than three (3) judges.

d. Prosecution.

The court in which the charges are to be heard shall designate an attorney to prosecute the same in the event the party bringing the charges is not represented by an attorney.

e. Hearing-Conducted as Civil Case.

The hearing of charges shall be governed by the same rules of law, evidence and procedure as are applicable to the trial of civil proceedings in equity.

f. Conviction of Crime-Adjudication of Misconduct.

1. Proof of Guilt.

In a hearing of charges pursuant to this Rule, a final judgment by a judicial tribunal in another proceeding convicting an attorney of a crime shall be conclusive proof of the guilt of the attorney of such crime. A plea or verdict of guilty, or a plea of nolo contendere followed by a fine or sentence, shall be deemed to be a conviction within the meaning of this Rule. A final adjudication by a judicial tribunal in a disciplinary proceeding that an attorney has been guilty of misconduct shall be considered as conclusive proof of such misconduct in the hearing of charges pursuant to this Rule.

2. Additional Evidence.

The introduction of evidence in a proceeding pursuant to this Rule of an attorney's conviction of a crime in a judicial tribunal or adjudication of misconduct by a judicial tribunal, shall

not preclude the prosecution from introducing additional evidence, nor shall it preclude the attorney from introducing evidence or otherwise showing cause why he should not be disciplined.

RULE BV5. DISPOSITION OF CHARGES.

a. Recommendations.

A court may recommend that the charges be dismissed or that any of the following types of discipline be imposed: (i) disbarment, (ii) suspension, (iii) reprimand. A written statement of the recommendation of the court and its reasons therefor shall be filed in the record of the proceedings and copies sent to all parties.

b. Subsequent Proceedings.

1. Record.

Within thirty days after the recommendation of the court is filed, unless a different time shall be fixed by order entered pursuant to sections b and c of Rule 825 (Record-Time for Transmitting), the Clerk of the court shall transmit the record to the Court of Appeals, Rules 826 (Record on Appeal) and 827 (Correc-

tion of Error or Omission in Record) shall apply.

2. Exceptions.

Within thirty days after the filing of the record in the Court of Appeals, any party may file in the Court of Appeals exceptions to the recommendations of the court. An answer to the exceptions shall be filed within twenty days from the filing of the exceptions. Copies of exceptions and answers shall be served upon all other parties in the manner prescribed by section c of Rule 306 (Service of Pleadings and Other Papers), and proof of such service shall be made in the manner prescribed by section d of Rule 306 (Service of Pleadings and Other Papers). Exceptions and answers thereto shall filed in eight (8) legible typewritten copies. Cases under this Rule shall be disposed of as soon as practicable and shall not be placed on the regular appeals docket.

3. Oral Argument.

Oral argument shall be had on any exceptions and shall be governed by Rule 846 (Oral Argument).

4. Review by Court of Appeals.

The Court of Appeals may adopt, modify or reject the recommendations of the court, or may remand the case for further proceedings. The provisions of subsections 1, 2

and 3 of this section shall govern proceedings after the order of remand shall have been complied with by the court. The Court shall review the recommendation after remand as provided in this subsection.

5. Decision of Court of Appeals.

The decision of the Court of Appeals shall be final. The decision shall be evidenced by the order of the Court of Appeals, which shall be certified under the seal of that Court by the Clerk and may be accompanied by an opinion. The record in the case shall be retained by the Clerk of the Court of Appeals.

RULE BV6. RESIGNATION.

a. Where Filed.

An application to resign from the practice of law in this State shall be submitted only to the Court of Appeals and must be in writing. The submission of an application to resign shall not prevent or stay disciplinary proceedings against the attorney.

b. Procedure.

The Court of Appeals shall notify the Secretary of the Maryland State Bar Association, Inc. of the submission of

an application to resign and may cause an investigation to be made and hearings to be held in any court of the State as it deems appropriate. The record of any investigation or hearing shall be forwarded to the Clerk of the Court of Appeals and maintained as a permanent record of that court.

c. Effect.

A resignation shall be effective only upon acceptance thereof by order of the Court of Appeals. The order shall specify whether the resignation is accepted with or without prejudice. A resignation with prejudice is equivalent to disbarment for purposes of reinstatement. Upon entry of an order accepting the resignation of an attorney, the provisions of Rule BV8 (Effect of Discipline, Resignation and Inactive Status) shall be complied with.

d. Form and Content of Resignation With Prejudice.

A resignation with prejudice shall be verified. The attorney shall state therein that the resignation is freely and voluntarily rendered. The Court of Appeals may require as a condition of acceptance of a resignation

with prejudice that it contain a description of the misconduct, an admission thereof by the attorney, and such other factual matter or conditions as the Court of Appeals may require.

RULE BV7. INCOMPETENCE-INACTIVE STATUS.

a. Procedure.

Where it is alleged in a complaint initiated pursuant to this Subtitle that an attorney is incompetent, the procedures to be followed shall be the same as in other cases where an investigation has been undertaken and charges filed under this Subtitle.

b. Findings by Court.

If the court to which the charges are transmitted shall find by clear and convinving proof that an attorney is incompetent, it shall recommend to the Court of Appeals that an order be passed placing such attorney on an inactive status. Otherwise the court shall recommend dismissal of the charges.

BV8. EFFECT OF DISCIPLINE, RESIGNATION AND INACTIVE STATUS.

A. Striking name from rolls.

When an order suspending or disbarring an attorney from the practice of law or placing him on inactive status has be-

come final, or upon passage of an order accepting an attorney's resignation from the practice of law in this State, the Clerk of the Court of Appeals shall forthwith strike the name of the attorney from the register of attorneys in said Court, and certify said fact to the Trustees of the Clients' Security Fund and the clerks of all judicial tribunals in the State.

b. Effect-Not to Practice Law.

An attorney shall not practice law after the date of an order accepting his resignation or disbarring him or during the period of suspension or inactive status. Upon expiration of the period of his suspension specified in the order, an attorney may practice law.

RULE BV9. Termination-Modification-Reinstatement.

a. Petition-Where Filed.

A petition to modify or terminate a suspension or for termination of inactive status or for reinstatement shall be filed in the Court of Appeals.

b. Content.

The petition shall set forth facts showing that the petitioner is rehabilitated and is otherwise entitled to the relief sought. It shall also in-

clude a docket reference to all prior proceedings with respect to the charges.

c. Service of Petition.

The petition shall be served on the Secretary of the Maryland State Bar Association, Inc. The petition also shall be served in such manner as the Court of Appeals may direct upon the party who filed the charges and upon any other person who may be designated by the Court of Appeals.

d. Procedure.

1. Dismissal Without Hearing.

Upon receipt of a petition for reinstatement or for modification or termination of suspension or inactive status, the Court of Appeals may consider any written evidence submitted with the petition and the prior proceedings with respect to the charges and may dismiss the petition without a hearing or reserve judgment until after a hearing. The remaining provisions of this section shall not apply if the petition is dismissed without a hearing.

2. Appointment of Counsel.

If any person served with a copy of the petition filed under this Rule does not appear by counsel, the Court of Appeals shall appoint counsel to represent such person.

3. Burden of Proof.

The burden shall be upon the pet-

itioner to establish the averments of the petition by clear and convincing proof.

4. Subsequent Pleadings-Hearings-Disposition.

The provisions of section e of Rule BV3 (Charges-Pleadings), Rule BV4 (Hearing), and section b of Rule BV5 (Disposition of Charges-Subsequent Proceedings) shall be applicable to proceedings instituted pursuant to this Rule.

5. Replacing Name on Rolls.

When an order reinstating an attorney after disbarment, resignation or inactive status, or reducing the period of his suspension, has become final, or upon the termination of the period of his suspension, the Clerk of the Court of Appeals shall replace the name of the attorney upon the register of attorneys in that Court and shall certify that fact to the Trustees of the Clients' Security Fund and the clerks of all judicial tribunals in the State.

RULE BV10. COSTS.

a. General.

Except as provided in section b of this Rule, all court costs in proceedings under this Subtitle shall be paid by the State unless the Court of Appeals shall direct otherwise.

b. Proceedings Under Rule BV9.

In proceedings under Rule BV9 (Reinstatement), all court costs shall be paid by the attorney filing the petition, except to the extent that the Court of Appeals shall direct otherwise.

c. Judgment.

Costs of proceedings under this Subtitle shall be taxed by the Clerk of the Court of Appeals and embraced in the order as a judgment. The action of the Clerk may be reviewed by the Court of Appeals on motion.

d. Bad Faith.

The provisions of section b of Rule 604 (Bad Faith-Unjustified Proceeding-Delay) shall apply to proceedings under this Subtitle.

THE BAR ASSOCIATION OF BALTIMORE CITY	:	In The Court of Appeals
V.	:	of Maryland
HAROLD POSNER	:	Misc. Docket (Subtitle BV) No. 7, Sept. Term, 1974

ATTORNEY'S MOTION TO DISMISS AND ANSWER TO CHARGES ALLEGING MISCONDUCT BY AN ATTORNEY

Now comes Harold Posner, an Attorney of the State of Maryland, representing himself, in proper person, and files this Moti

on to Dismiss Charges Alleging Misconduct by an Attorney, and for reasons therefor, states the following:

2. That the entire Subtitle BV section of the Maryland Rules of Procedure is unconstitutional and is contrary to both the Constitution of the State of Maryland and the United States for lack of due process of law, as will appear below:

(a). Defendant Attorney Posner is denied a Jury trial of the charges pending against him. The U. S. Supreme Court has ruled that constitutional guarantees are applicable to a disciplinary proceeding, which is a quasi-judicial proceeding. The case referred to is Spevack v. Klein, 385 U. S. 511, 87 S. Ct. 625, 17 L. ed. 574 (1967). This case held that the privilege against self-incrimination is applicable in disciplinary proceedings.

(b). That Defendant Attorney Posner is denied the right to a speedy trial. That although the Grievance Committee hearing took place in September, 1972, charges were not filed until July, 1974.

(c). That Defendant Attorney Posner is denied the right to name

any of the three (3) Judges to hear the charges against him. He is denied challenges to any or all of said Judges. Peremptory challenges are available in Jury trials in criminal prosecutions, and since a disciplinary proceeding is a quasi-judicial proceeding, the same rules should govern. Otherwise, this is a denial of the equal protection clause to the 14th Amendment to the U. S. Constitution.

(e). There are no limitations in Subtitle BV of the Maryland Rules of Procedure as to a time limit in which charges can be brought against an attorney in a disciplinary proceeding. There are limitations in all civil and criminal statutes, ordinarily. This amounts to "cruel and unusual punishment" within the meaning of the 8th Amendment to the U. S. Constitution. No other profession is faced with such a burden.

(g). There is no regulation of any Bar Association by any State or Federal agency. Valid charges involving unethical conduct and related improper activities against an attorney can be blocked in different ways: by the Executive Council of a Bar Association, by a President of a Bar Assoc-

iation, and by the Grievance Committee itself. No standards are set forth.

3. The instant disciplinary proceeding against Attorney Harold Posner is barred by laches. Most of these charges go back 7, 8 and even 10 years.

4. Posner is denied the equal protection of the laws of the 14th Amendment to the U. S. Constitution, due to the fact that The Bar Association of Baltimore City only brings charges of unethical conduct, etc. against selected attorneys. It has a double standard when it concerns wealthy and prominent attorneys, and members of large law firms in connection with complaints of unethical conduct, malpractice, conduct prejudicial to the administration of justice, etc. These unethical practices, often more serious than the charges against Posner, are never brought to Court. They are always dropped, regardless of the seriousness of, and the truth of said charges. The Bar Association of Baltimore City always pursues and harasses small lawyers like Posner.

5. That The Bar Association of Baltimore City failed to comply with the provisions of Subtitle BV of the Maryland Rules of Procedure regarding Posner. He was denied the opportunity to cross-

examine witnesses at a panel hearing of the Grievance Committee of The Bar Association of Baltimore City in September, 1972.

Movant requests the right to take testimony on this aforegoing Motion.

/s/ Harold Posner

THE BAR ASSOCIATION OF BALTIMORE CITY	: In The Court of : Appeals of
v.	:Maryland
HAROLD POSNER	:Misc. Docket (Subtitle BV) ADMINISTRATIVE OFFICE SUPREME BENCH

SUBPOENAS DUCES TECUM

Mr. Clerk:

Please issue subpoenas duces tecum directed to the following:

1. William W. Cahill, Jr., Esq., President, The Bar Association of Baltimore City, c/o Weinberg and

Green, Maryland National Bank Bldg.,
10 Light St.
Baltimore City, Md.,

2. Henry L. Rocklin, Jr., Esq.,
Equitable Bldg.
Calvert & Fayette Sts.
Baltimore City, Md.,

3. The Bar Association of Baltimore
City, Robert E. Ashman, Esq.,
Executive Director,
621 Court House
St. Paul & Fayette Sts.
Baltimore City, Md.,

to produce, bring with him, the following:

(a). All records of complaints dating from January 2, 1970 until January 31, 1975, inclusive, before the Grievance Committee and the Executive Council of The Bar Association of Baltimore City involving attorneys who have had complaints filed against them involving alleged unethical conduct, malpractice, incompetence, conduct prejudicial to the administration of justice, alcoholic behavior, conviction of a crime involving moral turpitude, and any other related alleged improper activities. This includes the complaints and the statement of

facts involved, and the names of all attorneys involved.

(b). All records of The Bar Association of Baltimore City, and of its committees, including the Grievance Committee, and also of the Executive Council of The Bar Association of Baltimore City providing in detail, as to each attorney involved, dating from January 2, 1970 until December 31, 1974, inclusive, the disposition of each complaint filed before The Bar Association of Baltimore City, in which a violation of legal ethics or other improper activity regarding an attorney, is alleged. This includes all records in which the Executive Council of The Bar Association of Baltimore City has taken action or refused to take action, and all cases in which Presidents of The Bar Association of Baltimore City has withheld his signatures from Petitions that were to have been filed with the Court of Appeals of Maryland charging certain named attorneys with professional misconduct.

(c). All records of The Bar Association of Baltimore City including the Executive Council of said Bar Association, pertaining to comp-

laints or the lack of complaints involving alleged breach of legal ethics, etc., dating from January 2, 1970 until December 31, 1974, involving the following attorneys:

14 named attorneys

and also to testify personally regarding the information and records and data requested, returnable to Thursday, February 6, 1975 at 10 A. M., to Room 600, Supreme Bench Room, Court House, St. Paul & Fayette Sts., Baltimore City, Md.

/s/ Harold Posner
Defendant

THE BAR ASSOCIATION OF BALTIMORE CITY	:	In The Court of Appeals
	:	of
v.		Maryland
	:	
HAROLD POSNER		Misc. Docket
	:	(Subtitle BV)
		No. 7, September
	:	Term, 1974

ORDER

Upon consideration of the motion of respondent for revision of Court of Appeals of Maryland decision dated

June 24, 1975, and motion of respondent to defer issuance of mandate, it is this 1st day of August, 1975,

ORDERED, by the Court of Appeals of Maryland, that the above-mentioned motions be, and they are hereby, denied, and it is further

ORDERED, that the name of Harold Posner be stricken forthwith from the register of attorneys in this Court and that the Clerk certify that fact as required by Rule BV13.

/s/ Robert C. Murphy
Chief Judge

IN THE
COURT OF APPEALS
OF
MARYLAND

EXCEPTIONS OF RESPONDENT, HAROLD POSNER TO THE MEMORANDUM AND RECOMMENDATION OF THE PANEL ON DISCIPLINARY PROceeding

I- The Maryland Rules of Procedure, Subtitle BV, are unconstitutional on their face and as applied in this proceeding, and violate the Fifth Amendment of the Federal Constitution, as

applied to the States by the Fourteenth Amendment, violating the Constitutional Rights of respondent to due process and equal protection of the Laws...:

1. Denial of right to trial by jury.

2. Denial of right to speedy trial. (Klopfer vs. North Carolina, 386 U. S. 213.

3. Denial of right to an impartial tribunal, (See Irvin vs. Dowd, 366 U. S. 1961), through impartial random selection.

4. Denial of the right to peremptory challenge, voir dire examination of the members of the tribunal on oath, or challenge for cause.

5. The absence of any time bar to disciplinary proceedings in the nature of a Statute of Limitations, or the doctrine of laches, and the refusal of the Maryland Courts to judicially construe and apply limitations to disciplinary proceedings and to construe and apply, as mandatory,...is a denial of due process, equal protection and amounts to cruel and unusual punishment within the meaning of Amendment VIII of the Federal Constitution.

11. The disbarment and disciplinary power is uniformly exercised and applied in a discriminatory manner, against individual practitioners, representing poorer and less privileged segments of society, who are members of religious, and racial or ethnic minorities, and in favor of large law firms, representing economically wealthy and privileged segments of society and composed in the main of the more powerful societal groups. E. G. and Cf. In Re: Foster H. Fanseen, (Proceedings of The Bar Association of Baltimore City), with Fellner vs. Bar Association, 213 Md. 243, and Prince George's County Bar Association vs. Vance, 273 Md. 79; apparent absence of disciplinary proceedings following U. S. vs. Sharetts, U. S. D. Ct., Md., Criminal No. 25256/56 and U. S. vs. Atwater, U. S. D. Ct. D. C. Md. 26642/62.

12. The respondent was denied the right to produce evidence that the disciplinary system, as prescribed by the BV Rules...is unconstitutional , by reason of the Three-Judge Panel's quashing of his subpoena duces tecum, which action,

respondent submits, was itself a denial of his due process right to compulsory process. (Washington vs. Texas, 388 U. S. 14).

13. Respondent repeats, realleges and incorporates by reference herein his Motion to Dismiss filed January 29, 1975, which is attached hereto.

14. Respondent's right to due process of law was violated in this proceeding, in that the acts found to constitute disciplinary offenses were not contained in the Charges alleged by the complaining Bar Association. (In Re: Ruffalo, 390 U. S. 544, 88 S. Ct. 1222, Bar Association vs. Cockrell, 270 Md. 685, 313 A2d. 816, Bar Association vs. Cockrell, Md. , 334 A2d. 85.

REGULATION .33 OF STATE OF MARYLAND, DEPARTMENT OF LICENSING AND REGULATION:

> "No complaint against a home improvement contractor subject to the jurisdiction of the Home Improvement Commission will be entertained after the expiration of three (3) years from the date of the written or oral contract for home improvement work from which the complaint arises."